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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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MAR 17 1994

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of:

800 Data Base Access Tariffs and the
800 Service Management System Tariff

CC Docket No. 93-129

OPPOSITION TO APPLICATION FOR REVIEW

Allnet Communication Services, Inc. (Allnet) respectfully opposes the Application for Review filed by only five of the seven Bell Operating Companies (hereinafter, the "Applicant BOCs").¹ The Application for Review's legal arguments are highly misplaced and highly convoluted in their logic. The Applicant BOCs have completely misrepresented the actions of the Bureau in a desperate attempt to allow the BOCs to engage in collusive rate making practices, via Bellcore, and engage in secret ratemaking with the Bureau by behind their "confidential" SCIS software claims.

The Bureau Order: The Bureau correctly concluded that the BOCs must allow for public viewing of any support material that the BOCs used to support their 800 rates. Applying its expertise in the ratemaking area, the Bureau concluded that the support necessary for justifying the 800 rates did not require the presentation of any raw confidential or trade secret computer software or vendor inputs.

In order to assure that the BOCs did not hide behind their collusively developed Bellcore software, the Bureau presented the BOCs with an option. Each BOC could either present their cost material without the software or present their cost material with the software. However, recognizing that to present the cost material using the

¹The BOCs who signed the application for review were: Ameritech, Bell Atlantic, Pacific Bell, NYNEX, and US West. Missing of the seven RBOCs were BellSouth and Southwestern Bell.

software, a BOC would effectively prevent interested parties from having the same ability to review and comment on their cost support, as compared with the scenario where those BOCs presented their material without the aid of the software.²

By giving the BOCs a choice of how to present their cost support material, the BOCs are not being forced to divulge any information that they believe is confidential or otherwise protected under FOIA. It is their option and the Applicant BOCs have presented no meaningful substantiation as to why they need to divulge the SCIS material when an alternative presentation method is available to them.

Providing Confidential Treatment Is Discretionary. The Applicant BOCs effectively argue that once the Commission affords protection to material under the FOIA exemption, the Bureau is bound to that treatment. However, this is blatantly wrong. The Bureau is not bound by any prior treatment of materials because the application of the FOIA exemption is discretionary. Specifically, even if the Commission concludes that matter is within of the exemptions under the FOIA, the Commission (or the Bureau) may choose too release that material in its discretion when applied to the facts in another particular base.³ The FOIA exemptions may not be used as a basis for preventing disclosure if the FCC or the Bureau chooses to do so in a particular case, as is the case here.

As the Applicant BOCs note, the release of information that falls within one of

²By presenting the cost material using the software, a BOC is able to avoid having to explain the basis methods used for the cost development and the data for that cost development. Instead, they simply refer to the black box model and claim that whatever the black box model says is what is correct. That is, the BOC allows itself to relinquish responsibility for the cost development process and to blind interested parties from seeing this information.

³The FOIA only compels disclosure of certain materials, but it does not require non-disclosure of any materials. E.g. Kansas Gas & Elec. Co. v NRC, No. 87-2748, slip. op. at 3 (D.D.C. July 2, 1993) ("party seeking to prevent disclosure ...must rely on other sources of law, independent of FOIA, to justify enjoining disclosure.")

the exemptions is determined through a balancing.⁴ That balance can surely shift with each case considered by the Commission or the Bureau. The Bureau, applying its ratemaking expertise in this area, concluded that the balance shifted towards disclosure because each BOC has the option to employ the alleged confidential model or not.

A careful examination of the Application reveals what the Applicant BOCs really want. They want secret ratemaking and collusion in price setting. In this vein, the Applicant BOCs "offered" as an alternative to have Bellcore -- which is co-owned by the seven BOCs -- provide "assistance to the Bureau in its evaluation of the reasonableness of the model."⁵ This suggestion is both illegal under the APA and plain insulting to the intelligence and integrity of this Commission.

To add insult to injury, the Applicant BOCs also suggest highly limited access to redacted versions of the materials. Once again, the Applicant BOCs ask the Commission to cross-over the line and blind the public from reasonably segregable portions of the materials.⁶ Instead, those segregated portions are the only portions that the BOCs hope to allow interested parties to view and, from their view, hopefully prevent those interested parties from providing any meaningful commentary on the BOC's direct cases.⁷

Ironically, the direct cases have been filed below without the need for the SCIS

⁴Application at 4.

⁵Application at 6, note 20..

⁶5 U.S.C. §552(b) ("Any reasonably segregable portion of a record shall be provided to any person requesting such record after deletion of the portions which are exempt under this subsection.")

⁷It should be noted that the BOCs have, to this day, refused to provide Allnet access to the "Redaction II" version of the SCIS materials, even though Allnet did sign a non-disclosure agreement and returned Allnet's only copy of the Redaction I software to Bellcore. This type of abuse by the BOCs regarding who will be allowed to the material is the very type of abuse that the Bureau's decision will avoid.

material. Thus, this fact simply disproves the underlying theory of the Applicant BOCs of whether the use of the SCIS software is critical to the presentation of the cost material.

Conclusion For the reasons set forth herein, the Bureau's decision should be affirmed.

Respectfully submitted,
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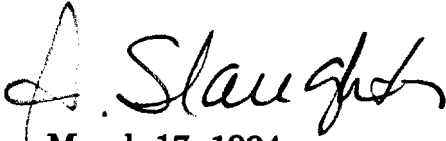


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Dated: March 17, 1994

Certificate of Service

I, Angela Slaughter, hereby certify that I have caused to be served on this date, a true copy of the forgoing Allnet Opposition by postage-prepaid first class mail to the parties on the attached service list.

A handwritten signature in cursive script, appearing to read "A. Slaughter".

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